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March 6, 1996

**VIA HAND DELIVERY**

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Aileen Pisciotta, Esq.  
Chief, Planning and Negotiations Division  
International Bureau  
Federal Communications Commission  
2000 M Street Northwest, Room 800, Stop Code 0800C  
Washington, D.C. 20554

Re: Petition for Rule Making  
Radio Station KBAE(FM),  
Channel 284C3,  
Llano, Texas  
Maxagrid Broadcasting Corporation  
MM Docket No. 95-49

Dear Ms. Pisciotta:

Our client, Maxagrid Broadcasting Corporation, seeks to improve the licensed facilities of Class C3 FM Broadcast station KBAE. Specifically, Maxagrid desires to relicense station KBAE from Llano, Texas to Marble Falls, Texas. Marble Falls is a substantial community but lacks a local service. As part of the proposal, to comport with the Commission's technical requirements as regards spacing and city-grade service, Maxagrid seeks to shift the station's operating frequency by 200 kHz, from Channel 284C3 to Channel 285C3.

On November 14, 1994, Maxagrid filed a Petition with the Commission asking for the initiation of a rule making seeking to modify the FM Table of Allotments, § 73.202, and asking for modification of KBAE's license consistent with the above. The Mass Media Bureau issued a Notice of Proposed Rule Making and Order to Show Cause in response to Maxagrid's Petition for Rule Making. Llano and Marble Falls, Texas, 10 FCC Rcd 4913 (May 1, 1995). Paragraph 5 of the NPRM noted that "[s]ince Marble Falls is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. Two parties other than Maxagrid filed Comments in response to the NPRM.<sup>1</sup> The matter remains pending before the Allocations Branch of the Mass Media Bureau.

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<sup>1</sup> The Kirkman Group, Inc., and Mr. Roy E. Henderson.

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When first authorized as a Class C3 station, for compliance with the terms of the FM Broadcasting Treaty between the United States and Mexico then in force,<sup>2</sup> the FCC had to treat KBAE as a Class B station with regard to Mexican allotments and assignments. That is because Class C3 allotments did not exist in 1972, when the two countries adopted the prior Treaty. However, a superseding Treaty recognized the intermediate Class C3.<sup>3</sup>

The 1992 Treaty took effect in September 1994. The Commission's Public Notice announcing the effectiveness of the new Treaty, New Agreements With Mexico, Mimeo No. 44899 (September 27, 1994), stated that the new FM Treaty would "afford numerous U.S. FM stations in the border area... the opportunity to upgrade their facilities." Accordingly, to obtain authority to do exactly that, shortly thereafter, Maxagrid filed its Petition for Rule Making. However, nearly 16 months later, the proceeding is still unresolved. We understand from conversations with the staff of the Mass Media Bureau that they cannot conclude the rule making without the consent of your Division. Hence this letter.

Under the terms of the 1992 Treaty, a proposed modification to a Border Zone station:

"will be accepted if it conforms to with the technical criteria and Table 2, Minimum Distance Separation Requirements, contained in Annex 1 to th[e] Agreement, subject to the notification procedures contained in Article 8."

1992 Treaty at Article 7.2. The proposed improvement to KBAE comports with those technical criteria and with Table 2, Minimum Distance Separation requirements, contained in Annex 1 to the 1992 Treaty. Also, we understand from conversations with International Bureau staff members, including Mr. James Ballis (who has been extremely cooperative), that the proposal has been the subject of the notification procedures specified in Article 8 of the 1992 Treaty.

Under Article 8.1.1 of the 1992 Treaty, either Government may notify the other of a proposed facilities modification via registered mail. Under Article 8.1.2, the other Government shall have 60 days from the date of receipt of the registered mail notification to reply. Under Article 8.1.3, if the notified party does not respond within the time allotted, the notifying party:

will effect a new requirement in writing through the most expeditious and convenient means available for both parties, in order for the affected Administration to reply within a new 45 day period to commence at the end of the first period or to state whether it desires an additional term to render its answer. In any case, this additional term shall not exceed 45 days.

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<sup>2</sup>*Agreement Between the United States of America and the United Mexican States Concerning Frequency Modulation Broadcasting in the 88 to 108 MHz Band*, November 9, 1972 (the "1972 FM Treaty").

<sup>3</sup>*Agreement Between The Government of the United States of America and the Government of the United Mexican States Concerning Frequency Modulation Broadcasting in the Band 88 to 108 MHz*, August 11, 1992 (the "1992 FM Treaty").

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Under Article 8.1.4,

In the event that the Administration being affected does not answer within the 45-day period, or requests an additional 45-day period, then at the end of this last period, the proposal for amendment *shall be considered to have been accepted and shall be included in the Plan.*

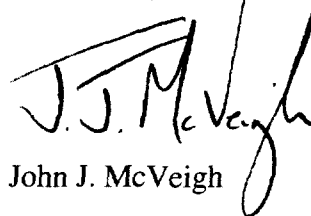
[Emphasis added.]

As we understand the situation, the International Bureau has provided all necessary notifications under Article 8 to the 1992 FM Treaty. As we further understand the situation, the Mexican Authorities have not objected to the KBAE proposal. The Mexican Administration has not explicitly approved the facilities change, either. However, in light of Article 8.1.4 of the 1992 Treaty, explicit approval from the Mexican Authorities is not needed. Because the Mexican Authorities neither objected to the proposal within 45 days of the second notification nor asked for a further 45 days to study the proposal, under the express terms of the 1992 Treaty, the FCC must deem the Mexican Administration to have accepted the proposal, and the rule making is — and has been — ripe for resolution.

It is well settled that the FCC staff must conform to the provisions of a controlling treaty in the processing of an application. Kerr County Broadcasting, 4 FCC Rcd 5021 (1989); Domega Broadcasting Corp., 4 FCC Rcd 1450 (1989); Kerrville Radio, 2 FCC Rcd 3441 (1987). We therefore respectfully request that the International Bureau advise the Mass Media Bureau, at the earliest possible moment, that an immediate resolution of the rule making comports with the controlling provisions of the 1992 Treaty.

Please advise us of the action you take with respect to this matter.

Very truly yours,



John J. McVeigh

ccs: Ms. Pamela Blumenthal, Allocations Branch,  
Policy & Rules Division,  
Mass Media Bureau

Mr. James Ballis, Chief,  
Notifications Branch,  
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